IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HONOURBALE SRI JUSTICE N.V.RAMANA

W.P. No. 1706 OF 2000

Dated: February 22, 2006

Between:

V.Papa Rao

Petitioner

AND

The A.P.S.R.T.C., Srikakulam Depot,
Rep. by its Depot Manager, Srikakulam
and two others.

Respondents

THE HONOURBALE SRI JUSTICE N.V. RAMANA

W.P. No. 1706 OF 2000

ORAL ORDER:

This writ petition is filed seeking to issue a writ of certiorari declaring the proceedings in P2/255(1)/99-SKLM-I dated 31.1.2000 issued by the first respondent to be contrary to the directions given by this Court in W.P. No. 4747of 1999, dated 28.12.1999, and to quash the same, and consequently direct the respondents to continue the petitioner as Trimmer till the date of superannuation i.e. 31.5.2007, and to pay the pay and allowances.

The case of the petitioner is that on nationalization of the route, he being a displaced persons, was taken into service by the first respondent in the year 1988, against the quota earmarked for displaced employees of private operators, and his services were terminated in the year 1989 for allegedly producing false date of birth certificate. The petitioner was sent for medical examination for assessment of his age, in pursuance of which the Corporation Hospital, Vizianagaram, issued certificate dated 22.5.1989 declaring the age of the petitioner as 40 years. In pursuance thereof, the petitioner was taken back into service, and his seniority as a Trimmer was also prepared. While so, the petitioner was served with the notice dated 5.3.1999 directing to attend Corporation Hospital, Tarnaka, Hyderabad, for medical examination, which was assailed by the petitioner in W.P. No. 4747 of 1999. This court while dismissing the writ petition, observed as under:

> *"… In this view of the matter, I am inclined to agree with the submission of the learned counsel for the respondents that the corporation has ample power under the said regulation to direct the petitioner to undergo medical examination once again. The regulation in fact, expressly, provides for repeated medical examination at such times or at such intervals, as may be deemed necessary. I do not, therefore, find any substance in the contention of the learned counsel for the petitioner that under the said regulation the Corporation has no power to direct the petitioner to undergo medical examination to verify his date of birth.*
>
> *Now coming to the next contention that no prior notice or opportunity was given to the petitioner, the impugned order is only an order directing him to undergo medical examination. No adverse order is as yet passed against the petitioner. After medical examination, if any adverse order is sought to be passed against him, the petitioner*

will be entitled for a reasonable opportunity to put forward his objection and make his representation. I am therefore, satisfied that this writ petition, which is filed merely against the order directing him to appear for medical examination has no merit…"

Pursuant to the above, the petitioner appeared before the Senior Medical Officer, Tarnaka Hospital, Hyderabad, who having examined him, found the petitioner to be over 58 years of age, and based on such report, the impugned order was passed by the first respondent, retiring the petitioner from service on superannuation w.e.f. 31.1.2000.

Aggrieved by the same, the present writ petition is filed *inter alia* contending that Dr. Aleka, Senior Medical Officer, Tarnaka Hospital, Hyderabad, who examined the petitioner, merely put some questions, he did not even touch the petitioner, much less conducted any medical test, to ascertain his age, and without conducting any medical test, he opined that the petitioner is more than 58 years of age. He submits that the procedure adopted in determining the age of the petitioner is not sanctioned by any Regulations of Service. He further contends that the medical examination was carried out in collusion with his brothers and at their instance, who are inimically disposed of against the petitioner on account of civil disputes pending between them. He, therefore, contends that retiring the petitioner from service based on the opinion of the Doctor, is illegal and arbitrary.

For the purpose of satisfying myself, I have directed the learned Standing Counsel for the Corporation to produce the medical notes of the Doctor, who examined the petitioner. A perusal of the medical notes produced by the learned Standing Counsel would disclose that that the Senior Medical Officer, Tarnaka Hospital, Hyderabad, has given his opinion based on the appearance and family history of the petitioner and also based on the enquiry by the Security Inspector, Vizianagarm, which in fact, is not the procedure prescribed for conducting medical examination for ascertaining the age of a person.

Even the counter is conspicuously silent as to whether any medical examination was conducted over the petitioner to ascertain his actual age. Therefore, the contention of the petitioner that his age was determined hand-in-glove with his brothers, without actually conducting any examination, cannot be overlooked.

In such circumstances, I deem it expedient to direct the respondents to once again carry out the medical examination. Consequently, the respondents are directed to once again carryout medical examination of the petitioner at APSRTC Tarnaka Hospital, Hyderabad, and determine the age of the petitioner, and on receipt of opinion from the Senior Medical Officer, Tarnaka Hospital, Hyderabad, the respondents are at liberty to take decision. In the event the petitioner happens to be less than 58 years, the he shall be entitled to all the benefits including back wages and all attendant benefits, and in the event the petitioner is found to be aged more than 58 years, then the respondents are at liberty to implement the impugned order and pay him the retiral benefits, to which he is entitled to.

N.V.RAMANA, J.

February 22, 2006.

MAS.